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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 RICHARD T. STANFIELD,

9 Plaintiff,

v.

10 METROPOLITAN CASUALTY  
11 INSURANCE COMPANY,

12 Defendant.

CASE NO. C21-5092 BHS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND

13 This matter comes before the Court on Plaintiff Richard Stanfield's motion to  
14 remand. Dkt. 12. The Court has considered the briefings filed in support of and in  
15 opposition to the motion and the remainder of the file and hereby grants the motion for  
16 the reasons stated herein.

17 **I. FACTUAL & PROCEDURAL BACKGROUND**

18 Stanfield and Suzanne Hougland were in an automobile accident on April 5, 2015  
19 allegedly caused by an uninsured motorist. At the time, Hougland and Stanfield were  
20 insured together under a shared policy with Metropolitan; the policy provides \$100,000  
21 per person and \$300,000 total in uninsured motorist ("UIM") coverage. Metropolitan  
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1 asserts that Hougland and Stanfield settled with the at-fault driver for policy limits of  
2 \$15,000 and then pursued claims for bodily injury under their UIM coverage.

3 After a demand from Hougland and Stanfield that Metropolitan pay the full limit  
4 of \$100,000 to each of them for their bodily injuries, Metropolitan made advance  
5 payments to \$58,000 and \$50,000 to Hougland and Stanfield, respectively. Dkt. 16-7, 16-  
6 8. Metropolitan made these advance payments without execution of any release. *See* Dkt.  
7 15 at 3.

8 Hougland and Stanfield then filed a joint complaint in Pierce County Superior  
9 Court, seeking to pursue the remainder of their uninsured motorist coverage (i.e., \$42,000  
10 for Hougland and \$50,000 for Stanfield). *See Hougland et al. v. Metropolitan Casualty*  
11 *Ins. Co.*, 3:20-cv-06137-TSZ, Dkt. 1-1 (W.D. Wash. 2020). Metropolitan removed the  
12 case to this Court on the basis of diversity jurisdiction, *id.*, Dkt. 1, and Hougland and  
13 Stanfield voluntarily dismissed their complaint, *id.*, Dkt. 2.

14 Hougland and Stanfield then refiled their claims in Pierce County Superior Court,  
15 albeit separately. *See* Dkt. 1-1; *Hougland v. Metropolitan Casualty Ins. Co.*, 3:21-cv-  
16 05090-BHS (W.D. Wash.), Dkt. 1-1. Metropolitan again removed the two cases on the  
17 basis of diversity. Dkt. 1; *Hougland*, 3:21-cv-05090-BHS, Dkt. 1.

18 Stanfield moves to remand the case, arguing that removal was improper as the  
19 amount in controversy does not reach the threshold \$75,000 to confer diversity  
20 jurisdiction.<sup>1</sup> Dkt. 12. He also seeks an award of fees and costs. *See id.* at 6–7.

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22 <sup>1</sup> Metropolitan additionally moved to consolidate *Hougland* with this case. *Hougland*,  
3:21-cv-05090-BHS, Dkt. 8. That motion is addressed in a separate order.

## II. DISCUSSION

### A. Motion to Remand

“A defendant generally may remove a civil action if a federal district court would have original jurisdiction over the action.” *Allen v. Boeing Co.*, 784 F.3d 625, 628 (9th Cir. 2015). Federal courts have original jurisdiction over, *inter alia*, cases where there exists a complete diversity of citizenship and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Defendants who remove cases on the basis of diversity jurisdiction must prove, by a preponderance of the evidence, that removal is proper. *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010). There exists a “strong presumption against removal jurisdiction,” which “must be rejected if there is any doubt as to the right of removal in the first instance.” *Id.* (internal quotation omitted); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (courts should “strictly construe the removal statute against removal jurisdiction”); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941) (“Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which [§ 1441] has defined.”).

Metropolitan asserts that the amount in controversy is met because (1) Stanfield seeks attorney fees pursuant to *Olympic Steamship*; (2) he implicitly asserts claims of bad faith; (3) the amount in controversy is not reduced by pre-litigation advances; and (4) Hougland and Stanfield have aggregating damages for the purposes of diversity. The Court will address each argument in turn.

1           **1.       *Olympic Steamship Fees***

2           In Washington, “an award of fees is required in any legal action where the insurer  
3           compels the insured to assume the burden of legal action, to obtain the full benefit of his  
4           insurance contract, regardless of whether the insurer’s duty to defend is at issue.”

5           *Olympic Steamship v. Centennial Ins. Co.*, 117 Wn.2d 37, 53 (1991). “[T]he rule  
6           articulated in *Olympic Steamship* is applicable where the insurer forces the insured to  
7           litigate questions of coverage . . . .” *McGreevy v. Oregon Mut. Ins. Co.*, 128 Wn.2d 26,  
8           33 n.6 (1995). ““Coverage means the assumption of risk of occurrence of the event  
9           insured against before its occurrence.”” *Kroeger v. First Nat. Ins. Co. of Am.*, 80 Wn.  
10          App. 207, 210 (1995) (quoting *Ryan v. Cuna Mut. Ins. Soc’y*, 84 Wn.2d 612, 615 (1974)).  
11          “Coverage disputes include both cases in which the issue of any coverage is disputed and  
12          cases in which ‘the extent of the benefit provided by an insurance contract’ is at issue.”  
13          *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 147 (1997) (quoting  
14          *McGreevy*, 128 Wn.2d at 33).

15          On the other hand, “dispute[s] over the value of the claim presented under the  
16          policy . . . are not properly governed by the rule in *Olympic Steamship*.” *Dayton v.*  
17          *Farmers Ins. Group*, 124 Wn.2d 277, 280 (1994). “Where the insurer admits coverage  
18          but, in good faith, denies or disputes the value of the claim, [*Olympic Steamship*] does not  
19          authorize fees.” *Solnicka v. Safeco Ins. Co. of Illinois*, 93 Wn. App. 531, 533 (1999).

20                 Often, however, there is a fine line between a coverage dispute and a  
21                 claim dispute. The insurer may admit some coverage, but dispute the scope  
22                 of coverage and then contend the case involves a claim dispute. Coverage  
                    disputes include cases in which coverage is denied and those in which the  
                    extent of the benefit is disputed. Coverage questions focus on such

1 questions as whether there is a contractual duty to pay, who is insured, the  
2 type of risk insured against, or whether an insurance contract exists at all.

3 Claim disputes, on the other hand, raise factual questions about the  
4 extent of the insured's damages. They involve factual questions of liability,  
5 injuries, and damages and are therefore appropriate for arbitration.

6 *Id.* at 534 (citations omitted).

7 While Stanfield's complaint sets out a demand of *Olympic Steamship* fees in  
8 praying "for an award of reasonable attorney's fees and costs, pursuant to *Olympic*  
9 *Steamship* and its progeny, and/or pursuant to contract law, common law or equity," Dkt.  
10 1-1 at 4, he argues that "the dispute is currently about only the value of these claims, not  
11 whether coverage exists," Dkt. 18 at 4. It is notable that Metropolitan does not classify  
12 the case as a coverage dispute; indeed, it appears that Metropolitan has conceded that  
13 Stanfield is covered by the UIM policy up to \$100,000. *See* Dkt. 16-1. Metropolitan  
14 further states that it "disputed [Stanfield's] asserted value of the claims, and attempted to  
15 negotiate a reasonable settlement." Dkt. 15 at 2.

16 Metropolitan provides evidence and lengthy analysis on Stanfield's *Olympic*  
17 *Steamship* fees, but it has not established by a preponderance of the evidence that this  
18 case is anything but a claim dispute. Stanfield alleges that Metropolitan "agreed that [he]  
19 was not fully compensated by the liability limits paid by the tortfeasor's insurer and paid  
20 \$58,000 of the UIM limits" and that he "was not fully compensated and is entitled to  
21 pursue claims for the remaining UIM benefits." Dkt. 1-1, ¶¶ 3.10, 3.11. Based on these  
22 allegations, it is a more reasonable assumption that this case involves "factual questions  
of liability, injuries, and damages" instead of "interpretation of the meaning or

1 application of a policy . . . .” *King Cty. v. Vinci Const. Grands Projets*, 191 Wn. App.  
2 142, 188–89 (2015) (internal citations and quotations omitted).

3 The Court thus concludes that, at this stage, Stanfield brings a claim dispute  
4 against Metropolitan and that *Olympic Steamship* fees are unavailable although pled. As  
5 such, the speculated attorney’s fees cannot aggregate to satisfy the amount in  
6 controversy.

## 7 **2. Claims of Bad Faith**

8 Metropolitan next argues that Stanfield complaint satisfies the amount in  
9 controversy because his “complaint is so vaguely and broadly pled that it encompasses  
10 extracontractual claims of bad faith.” Dkt. 15 at 14. Relying on communications between  
11 counsel, Metropolitan argues that Stanfield threatened to pursue extracontractual bad  
12 faith and Insurance Fair Conduct Act claims. While Stanfield’s complaint is sparse, the  
13 Court agrees that he has not alleged any IFCA violations or extracontractual claims.  
14 Metropolitan’s argument that the Court should read in such claims is unsupported by any  
15 legal authority.

16 Further, “a defendant who fails in an attempt to remove on the initial pleadings  
17 can file a removal petition when subsequent pleadings or events reveal a new and  
18 different ground for removal.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785,  
19 789 (9th Cir. 2018) (internal quotations omitted). If Stanfield were to amend the  
20 complaint to bring extracontractual claims, resulting in an amount in controversy greater  
21 than \$75,000, Metropolitan would have the opportunity to remove the case to federal  
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1 court within 30 days of receiving notice of amendment. *See id.* at 788. Therefore, the  
2 “additional” bad faith claims cannot be included in the amount in controversy.

### 3           **3.       Prelitigation Advances**

4           Metropolitan additionally argues that the amount in controversy should not be  
5 reduced by the prelitigation advances it made to Stanfield, i.e. that the amount in  
6 controversy should be the entire \$100,000 UIM policy. “In general, affirmative defenses,  
7 counterclaims, and potential offsets may not be invoked to demonstrate the amount-in-  
8 controversy is actually less than the jurisdictional minimum.” *Cortez Martine v. Ford*  
9 *Motor Co.*, 2019 WL 1988398, at \*3 (E.D. Cal. May 6, 2019) (internal citations omitted).  
10 Metropolitan concedes that it has been unable to locate authority on potential offsets  
11 decided in the context of a defendant seeking removal. Dkt. 18 at 17. But it argues that  
12 Stanfield’s claim is that he is entitled to the entire \$100,000 available under his UIM  
13 policy and that the amount has been offset by the \$50,000 it has already paid him.  
14 Further, Metropolitan argues that it retains the right to recoup overpayment if it is  
15 determined that Stanfield’s claim is valued less than the advances it already paid to him.  
16 Thus, Metropolitan argues that the amount in controversy should be deemed the entire  
17 \$100,000 UIM policy, not just the remaining \$50,000.

18           The Court is not persuaded the potential offset establishes the entire \$100,000  
19 UIM policy as the amount in controversy. “Events occurring *subsequent* to the institution  
20 of suit which reduce the amount recoverable below the statutory limit” do not eliminate  
21 federal diversity jurisdiction. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283,  
22 289–90 (1938) (emphasis added). The offer of the \$50,000 to Stanfield occurred prior to

1 the current lawsuit, leaving the remaining \$50,000 of UIM coverage in controversy. The  
2 Court would necessarily have to decide the merits of this case to determine whether the  
3 amount in controversy is met if it had to evaluate Metropolitan's potential offset  
4 argument. *See Geographic Expeditions*, 599 F.3d at 1108. Stanfield's complaint plainly  
5 states that he is pursuing "claims for the remaining UIM benefits." Dkt. 1-1, ¶ 3.11. If the  
6 entire \$100,000 UIM policy again becomes at issue, Metropolitan would again have the  
7 opportunity to remove the case to federal court. Metropolitan's prelitigation advances are  
8 thus not a part of the amount in controversy.

#### 9 **4. Aggregating Damages**

10 Finally, Metropolitan argues that the damages between Hougland and Stanfield  
11 can be aggregated to satisfy the amount in controversy. Dkt. 18 at 18 (citing *Ali v.*  
12 *Progressive Direct Ins. Co.*, Case No. C19-1015 RSM, 2019 WL 4565495, at \*2 (W.D.  
13 Wash. Sept. 20, 2019)). This Court has previously concluded that "aggregation has been  
14 permitted in cases in which two or more plaintiffs unite to enforce a single title or right in  
15 which they have a common and undivided interest." *Ali*, 2019 WL 4565495, at \*2 (citing  
16 *Synder v. Harris*, 394 U.S. 332, 335 (1969)). Metropolitan thus argues that the Court  
17 should find that Hougland and Stanfield's claims constitute a common and undivided  
18 interest because their contractual damages arise under a joint policy with an aggregate  
19 policy limit.

20 However, the plaintiffs in *Ali* brought suit together whereas Hougland and  
21 Stanfield have purposefully decided to bring separate claims. Hougland and Stanfield  
22 were previously united to enforce their rights under the UIM policy but chose to



1 voluntarily dismiss and refile separately. *See Hougland et al. v. Metropolitan Casualty*  
2 *Ins. Co.*, 3:20-cv-06137-TSZ, Dkts. 1-1, 2 (W.D. Wash. 2020). The Court cannot say that  
3 Hougland and Stanfield are united in litigation to enforce a single title or right in which  
4 they have a common undivided interest, unlike *Ali*. Their claims are therefore not  
5 aggregable to satisfy the amount in controversy.

6 The Court thus GRANTS Stanfield’s motion to remand as Metropolitan has not  
7 established the amount in controversy by a preponderance of the evidence.

#### 8 **B. Attorney’s Fees and Costs**

9 “An order remanding the case may require payment of just costs and any actual  
10 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C.  
11 § 1447(c). “Absent unusual circumstances, courts may award attorney’s fees under  
12 § 1447(c) only where the removing party lacked an objectively reasonable basis for  
13 seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). “[T]he  
14 standard for awarding fees should turn on the reasonableness of the removal.” *Id.* The  
15 plaintiff does not have to prove that the defendant’s “action was frivolous, unreasonable,  
16 or without foundation,” because “there is no basis here for a strong bias against fee  
17 awards.” *Id.* at 138.

18 The process of removing a case to federal court and then having it  
19 remanded back to state court delays resolution of the case, imposes  
20 additional costs on both parties, and wastes judicial resources. Assessing  
21 costs and fees on remand reduces the attractiveness of removal as a method  
22 for delaying litigation and imposing costs on the plaintiff. The appropriate  
test for awarding fees under § 1447(c) should recognize the desire to deter  
removals sought for the purpose of prolonging litigation and imposing costs  
on the opposing party, while not undermining Congress’ basic decision to

1 afford defendants a right to remove as a general matter, when the statutory  
2 criteria are satisfied.

3 *Id.* at 140.

4 While Metropolitan's improper removal delayed the proceedings and increased  
5 Stanfield's costs of litigation, the Court is unable to conclude that an award of fees is  
6 warranted. Stanfield's complaint contains a demand of *Olympic Steamship* fees, which  
7 alludes to a claim of denial of coverage. *See* Dkt. 1-1 at 4 (praying "for an award of  
8 reasonable attorney's fees and costs, pursuant to *Olympic Steamship* and its progeny,  
9 and/or pursuant to contract law, common law or equity."). Based on a literal reading of  
10 these allegations, the Court is unable to conclude that it was objectively unreasonable to  
11 base removal on the possibility of an award of *Olympic Steamship* fees. Thus,  
12 Metropolitan avoids an award of fees in this matter based on one reasonable argument.

### 13 **III. ORDER**

14 Therefore, it is hereby **ORDERED** that Stanfield's motion to remand, Dkt. 12, is  
15 **GRANTED**. The Clerk shall remand this action to Pierce County Superior Court and  
16 close this case.

17 Dated this 27th day of May, 2021.

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20 BENJAMIN H. SETTLE  
21 United States District Judge  
22